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Attorney Docket No. TRAC-100FWC CON

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of

RHONDA TRACY

Serial No.: 09/107,643

Filed: June 30, 1998

For: DISPOSABLE DIAPER WITH
PADDED WAISTBAND
AND PADDED LEGHOLES

Examiner: C. Mager

Art Unit: 3761

Assistant Commissioner for Patents
Washington, D.C. 20231

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) Date: January 30, 2001
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January 30, 2001

INFORMATION DISCLOSURE STATEMENT

Applicant Tracy discloses the following information which came to her attention beginning at a deposition on May 25, 2000.

Attached hereto is an Affidavit of Miguel Alemany. This Affidavit apparently was obtained at the behest of Kimberly-Clark, a defendant in current litigation with Mrs. Tracy. The Affidavit contains Mr. Alemany's personal attestation that a diaper marked as Defendant's Exhibit 8 is a LUVS Diaper made by Proctor & Gamble. According to Paragraph 3 of the Affidavit, diapers identical to this deposition exhibit were first sold by Proctor & Gamble in the United States before September 1986.

The Alemany Affidavit does not describe the structure of this alleged Proctor & Gamble

LUVS Diaper. Accordingly, applicant sets forth the characteristics of the diaper marked as Defendant's Exhibit 8, which was the diaper allegedly inspected by Mr. Alemany when making his affidavit.

The diaper of Defendant's Exhibit 8 contains a plastic outer layer on which are printed various characters purporting to be "Big Bird" and "Cookie Monster." These images contain a copyright assertion by "Muppets, Inc." but there is no assertion of the date of publication. The structure of the diaper includes the plastic outer layer, an absorbent pad or core, and a soft inner layer. At the waistband region of this diaper, sandwiched between the soft inner layer and the plastic outer layer is a strip of plastic which is adjacent to the waistband edge. This plastic strip is approximately 3/4 of one inch to one inch tall. It is horizontally oriented. It does not touch the skin of the wearer because the inner layer is between it and the skin of the wearer. It is flexible and thin.

The diaper of DX-8 does not contain any similar strip along the leghole regions. Instead, at the legholes, there appear to be two elasticized members extending through that region. These elastic members appear to be less than 1/8 of one inch wide and many inches long. They appear to assist in or provide the gathering function around the leghole. They are not directly adjacent to the outer periphery of the diaper, but are spaced inward from the edges. Each of the two legholes has these two elastic members.

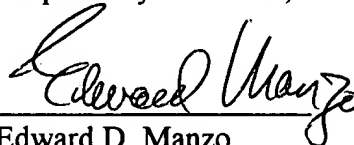
Applicant Tracy is not in possession of the alleged prior art LUVS diaper. Instead, possession of the exhibit is kept by counsel for Kimberly-Clark, and Mrs. Tracy or her representative are allowed

to see it only upon making an appointment.

A corrected transcript of the deposition of Mrs. Tracy is also enclosed, along with a transcript of Proctor & Gamble's deposition.

Further enclosed is a decision by Judge Kocoras in Tracy v. Jewel et al. dated November 16, 2000, concerning the DX-8 diaper and various claims of the Tracy '421 patent.

Respectfully submitted,



Edward D. Manzo
Attorney of Record
Registration No. 28,139

Dated: January 30, 2001

Enclosure: Affidavit of Miguel Alemany
Deposition transcript of Rhonda Tracy
Deposition transcript of Steven W. Miller (Proctor & Gamble)
Memorandum Opinion

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